tom. *Ellis* v. *Ohio Life Ins. & T. Co.*, 4 Oh. St. 628. The recognition of a custom under the circumstances of the instant case would seem warranted by analogy. And as to the endorsement, while one line of authority looks upon it as no guarantee to the drawee, but only to subsequent endorsers, another line is to the contrary, and considers it as affecting the drawee. *Ford* v. *People's Bank of Orangeburg*, 74 S. C. 180. A rule following the equities would seem to be the better.

BILLS AND NOTES—WHAT IS EVIDENCE OF DELIVERY UNDER PLEA OF NON EST FACTUM?—In an action against a decedent's estate on a promissory note, the administrator interposed a plea of non est factum, thus throwing upon the plaintiff the burden of proving the execution of the note. After proof of the signing of the note, it was offered in evidence. After the plaintiff rested his case, the defendant requested a directed verdict on the ground that the plaintiff had not made out a prima facie case. The plaintiff's motion was refused. On error, the question was what proof is necessary to make a prima facie case of delivery. *Held,* proof of signing, coupled with possession of the instrument, is sufficient. *Deeter* v. *Burk* (Indiana, 1915), 107 N. E. 304.

As execution is composed of the two elements of signing and delivering, and the plea of non est factum compels the plaintiff to prove execution, the proof of both signing and delivery is necessary. Some decisions, even in the state of the instant case, are to the effect that proof of signing, though coupled with actual possession, is not sufficient evidence of delivery. *Digan* v. *Mandel*, 167 Ind. 586; *Purviance* v. *Jones*, 120 Ind. 162; *Sears* v. *Daly*, 43 Ore. 346. The instant case adopts a contrary view which is also supported by certain Indiana decisions, *Brooks* v. *Allen*, 62 Ind. 401; *Taylor* v. *Gay*, 6 Blackf. 150. The theory in support of the doctrine of the instant case is that with the signing proved, and possession had, the inference must then be either that the maker did deliver the instrument, or that the holder came into possession of it wrongfully; that the presumption must be in favor of right conduct, and therefore that situation warrants the finding of delivery. This rule it was considered tended to promote the facility of commercial intercourse through the medium of negotiable instruments.

CONSTITUTIONAL LAW—ANTI-ALIEN LABOR STATUTE.—A statute of Arizona (enacted under the initiative provision of the constitution of that state) required employers of more than five laborers to include in that number at least eighty per cent of qualified electors or native-born citizens of the United States; *held,* such a statute is unconstitutional as denying aliens the equal protection of the laws. *Truax, et al.* v. *Raich* (1915), 36 Sup. Ct. 7.

The question was raised upon a bill in equity by an employee who had been threatened with discharge from employment because of the employer's fear of the penalties of the statute. The employment of the complainant was at the will of the parties; and the bill was filed before any proceedings had been begun against the employer for the violation of the statute. The employer, county attorney and attorney general were made defendants. The

court upheld the right of equity to restrain criminal prosecution when such prevention is necessary to the safe-guarding of rights of property. That the act in question is invalid, in that it denies to aliens the equal protection of the laws, cannot be doubted. The term "persons" as used in the fourteenth amendment has repeatedly been held to apply not only to citizens of the United States, but as well to all individuals who, though not yet naturalized, are within the jurisdiction of the states and owing a temporary allegiance. *Yick Wo* v. *Hopkins,* 118 U. S. 356; *United States* v. *Wong Kim Ark,* 169 U. S. 649; *Ex Parte Virginia,* 100 U. S. 339; *Mitchell* v. *Hitchman Coal and Coke Co.,* 214 Fed. 685. The statute examined in the principal case deprives aliens of just such a substantial property right as the guarantee of the equal protection of the laws is designed to protect. *Allgeyer* v. *Louisiana,* 165 U. S. 578, 41 L. Ed. 832; *Adair* v. *United States,* 208 U. S. 161, 52 L. Ed. 436; *Braceville Coal Co.* v. *People,* 147 Ill. 66; *In re Opinion of the Justices,* 220 Mass. 627, 108 N. E. 807. That the statute in question is clearly within the prohibition of the constitution would seem to be indicated by the fact that only a very few cases involving like statutes have ever come before the courts. Two cases in which substantially the same statute was held unconstitutional on like grounds are *In re Tiburcio Parrott,* 1 Fed. 481; *Ex Parte Case,* 20 Idaho 128, 116 Pac. 1037. The other point passed upon by the court, that of allowing the enforcement of a criminal statute to be restrained by a bill in equity, seems to carry that doctrine somewhat further than ever before permitted. At common law equity would not interfere with the enforcement of a criminal statute, *In re Sawyer,* 124 U. S. 200. An exception was, however, allowed in favor of a party to the criminal suit, when the bill involved the same right that was in issue in such suit, or was necessary to prevent the invasion of some right of property. The first obstacle, a technical one, would be that neither the complainant nor anyone else is as yet party to any criminal action. *Davis & Farnum Mfg. Co.* v. *Los Angeles,* 189 U. S. 207. With reference to the other ground of exception to the rule, the court expressly holds that complainant suffered an invasion of his right of property by the prospective enforcement of the act, despite the fact that he had then no contract of employment. His right to seek employment freely is held to be a substantial property right. See cases above cited.

CONTRACTS—AGREEMENT TO MAKE CONTRACT.—The government of the United States through its agents advertised for sealed bids for the construction of certain improvements at Ft. Mason, San Francisco, California. The defendant's bid was accepted with a certain modification. Defendant did not agree to this modification, and the government subsequently accepted the original bid of defendant without change. Defendant then refused to sign the written and formal contract, and the government sues for breach of contract. *Held,* (1) The binding effect of the contract cannot be defeated by the failure of either party to sign the formal contract, where the parties have reached a definite agreement through correspondence, even though the parties understood that such formal contract was subsequently to be drawn and executed. (2) Since, however, the government did not accept the pro-